

OFFICE OF THE ATTORNEY GENERAL
BUREAU OF SECURITIES
STATE OF NEW JERSEY
153 HALSEY STREET
P.O. BOX 47029
NEWARK, NEW JERSEY 07101

IN THE MATTER OF:

TD Ameritrade, Inc.,

CRD #7870.

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CONSENT ORDER
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BEFORE AMY KOPLETON, ACTING BUREAU CHIEF

Pursuant to the authority granted to the Chief of the New Jersey Bureau of Securities (“Bureau Chief”) by the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq. (“Securities Law”), and after investigation, review, and due consideration of the facts and statutory provisions set forth below, the Bureau Chief has determined that the remedies set forth below be assessed against TD Ameritrade, Inc. (“TD”).

WHEREAS, the New Jersey Bureau of Securities (the “Bureau”) is the State agency with the responsibility to administer and enforce the Securities Law; and

WHEREAS, N.J.S.A. 49:3-67 authorizes the Bureau Chief from time to time to issue such Orders as are necessary to carry out the provisions of the Securities Law, upon a finding that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the provisions of the Securities Law; and

WHEREAS, TD is a broker-dealer registered with the Bureau; and

WHEREAS, coordinated investigations into TD in connection with certain of its marketing and sale of auction rate securities practices during the period of approximately

January 24, 2006, through February 13, 2008 has been conducted under the auspices of a multistate task force; and

WHEREAS, those coordinated investigations resulted in the simultaneous entry on July 20, 2009 of Orders of consent against TD by the U.S. Securities and Exchange Commission, the Office of the Attorney General of the State of New York, and the Commonwealth of Pennsylvania; and

WHEREAS, TD has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to information relating to the investigation; and

WHEREAS, TD and the Bureau Chief wish to resolve these issues in accordance with the terms of this Consent Order and without the expense and delay that formal administrative proceedings would involve; and

WHEREAS, TD consents to the form and entry of this Consent Order without admitting or denying the findings of fact and conclusions of law set forth herein. Accordingly, TD waives the following rights:

- a. To be afforded an opportunity for hearing on the Bureau Chief's findings and conclusions of law in this Consent Order after reasonable notice within the meaning of N.J.S.A. 49:3-58(c)(2); and
- b. To seek judicial review of, or otherwise challenge or contend, the validity of this Consent Order; and

WHEREAS, TD elects to waive permanently any right to a hearing and appeal under N.J.S.A. 52:14B-1 et seq., with respect to this Consent Order; and

WHEREAS, the provisions set forth in this Consent Order constitute the entire agreement between the Bureau and TD.

FINDINGS OF FACT

The Bureau Chief makes the following findings of fact:

1. TD admits the jurisdiction of the Bureau, neither admits nor denies the findings of fact and conclusions of law contained in this Consent Order, and consents to the entry of this Consent Order by the Bureau.
2. TD was, at all times material herein, a New York corporation with its principal place of business at 1005 N. Ameritrade Place, Bellevue, Nebraska 68005.
3. TD is in the business of effecting transactions in securities in New Jersey as a “broker-dealer” within the meaning of the Securities Law.
4. TD maintains branch offices in New Jersey.
5. TD has and has had customers (“Customers” or “TD Customers”) located across the United States of America, including New Jersey.
6. Prior to February 13, 2008, TD solicited and sold to TD Customers financial instruments known as auction rate securities (“ARS”), including to at least one resident of New Jersey.

ARS

7. ARS are bonds or preferred stocks that have interest rates or dividend yields that are periodically reset through an auction process, typically every seven (7), twenty-eight (28), or thirty-five (35) days.
8. ARS are usually issued with thirty (30) year maturities, but ARS maturities can range from five years to perpetuity.

9. An ARS yield is determined by the periodic auctions (commonly referred to as “Dutch” auctions) during which ARS are auctioned at par.
10. ARS typically can only be bought or sold at par at one of these periodic Dutch auctions.
11. Under the typical procedures for an ARS auction in effect prior to February 13, 2008, an investor, including TD Customers, who wished to purchase ARS at auction, submitted a bid that included the minimum interest or dividend rate that the investor would accept.
12. ARS holders could either choose to keep their securities until the next auction or submit offers to sell their ARS.
13. An auction agent collected all of the bids and offers for a particular auction.
14. The final yield rate at which the ARS were sold was the “clearing rate” and the clearing rate applied to that particular ARS until the next auction.
15. Bids with the lowest rate and then successively higher rates were accepted until all ARS sell orders were filled.
16. The clearing rate was the lowest rate bid sufficient to cover all ARS offered for sale in the auction.
17. If there were not enough bids to cover the ARS offered for sale in an auction, then an auction would fail.
18. In a failed auction, investors, including TD Customers, who want to sell, are not able to do so and such investors must hold their ARS until at least the next auction.
19. In the event of a failed auction, an ARS issuer pays the holders a maximum rate or “penalty” rate, which is either a flat rate or a rate based on a formula set forth in the ARS offering documents.
20. Penalty rates might be higher or lower than the prior clearing rate or market rates on

similar products.

21. Due to various market conditions in the early part of 2008, many of the broker-dealers that acted as underwriters of the ARS offerings or as lead managers for the ARS auctions stopped submitting their own bids in support of the ARS auctions.

22. As a result, by February 13, 2008, the ARS market began to experience widespread auction failures, leaving ARS investors, including TD Customers throughout the United States of America, unable to sell their ARS holdings.

23. On February 13, 2008, through the date of this Consent Order, the ARS market has continued to experience widespread failures, making ARS holdings illiquid.

24. Some ARS have been redeemed by their issuers since February 13, 2008, however, thousands of ARS investors, including TD Customers, who currently hold ARS have been unable to sell through the auction process.

25. As of July 20, 2009, TD Customers held hundreds of millions of dollars in illiquid ARS that they were unable to sell through the auction process.

TD's Role in the ARS Market

26. To facilitate the auction process, issuers of ARS selected one or more broker-dealers to underwrite an offering and/or manage an auction process.

27. In many instances, these chosen broker-dealers submitted their own bids to support the ARS auctions and to prevent the auctions from failing.

28. TD did not act as an underwriter, manager, or agent for any issuer of ARS.

29. As a distributing or "downstream" broker-dealer, TD did not submit bids in an effort to support any of the ARS auctions or to prevent them from failing.

30. TD also did not hold any significant inventory of ARS in its broker-dealer house account(s).

31. TD acted solely as an agent, both on a solicited and unsolicited basis, for TD Customers by submitting their bids to purchase and orders to sell ARS.

32. TD received revenue, including fees for acting as an agent for customers in connection with ARS.

TD's ARS Sales to TD Customers

33. In soliciting TD Customers to purchase ARS prior to the middle of February 2008, TD's registered representatives made inaccurate comparisons between ARS and other investments, such as certificates of deposit or money market accounts, telling customers that ARS were similar investments but with a slightly higher yield.

34. In soliciting TD Customers to purchase ARS prior to the middle of February 2008, TD's registered representatives also did not accurately characterize the investment nature of ARS since ARS are highly complex securities that are very different from money market funds or certificates of deposit, as evidenced by, among other things, the dependence of ARS on successful auctions for liquidity.

35. TD's registered representatives also did not provide customers with adequate and complete disclosures regarding the complexity of the auction process and the risks associated with ARS, including the circumstances under which an auction could fail.

36. TD's registered representatives did not adequately disclose to TD Customers that the Customer's ability to liquidate the ARS depended on the willingness of other investors to buy the instruments at an auction.

37. The information described in paragraphs 33 through 36 was material to TD Customers.

38. TD was aware that its registered representatives marketed ARS to customers as liquid and as an alternative to cash, certificates of deposit, or money market funds without adequately disclosing that ARS are complex securities that may become illiquid.

CONCLUSIONS OF LAW

Solely for the purpose of this Consent Order, and without admitting or denying the findings of fact and conclusion of law set forth herein, TD consents to the Bureau Chief making the following conclusions of law:

1. TD, through the conduct described above and in connection with the offer, sale or purchase of a security, made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in violation of N.J.S.A. 49:3-52(b).

2. The activities set forth herein are grounds, pursuant to N.J.S.A. 49:3-67, for the Bureau Chief to make an order as reasonably necessary to carry out provisions of the Securities Law as may be in the public interest and for the protection of investors.

ORDER

On the basis of the Findings of Fact, Conclusions of Law, and TD Ameritrade, Inc.'s consent to the entry of this Consent Order,

It is on this 20th day of April 2011, HEREBY ORDERED:

1. This Consent Order concludes the investigation by the Bureau and any other action that the Bureau could commence under applicable New Jersey law on behalf of New Jersey as it relates to TD, concerning the marketing and sales of ARS by TD, provided, however, that excluded from and not covered by this paragraph are any claims by the Bureau arising from or relating to the enforcement of this Consent Order. The Bureau reserves the right to investigate and commence any proceeding it deems appropriate, in its sole discretion, relating in any way to (a) any Customer who requests a purchase from TD and who purchased Eligible Auction Rate Securities at TD prior to February 13, 2008, but transferred such Eligible Auction Rate Securities away prior to January 24, 2006; (b) any account owner described in paragraph 3(b)(3) of this Consent Order that was excluded from the definition of Eligible Investor because it had over \$10 million in assets at TD or total assets greater than \$50 million; or (c) any account owner who holds or held Eligible Auction Rate Securities that were purchased at TD or entities acquired by TD's parent companies in an account owned, managed, or advised by or through an independent registered investment adviser.
2. This Consent Order is entered into solely for the purpose of resolving the referenced multistate investigations, and is not intended to be used for any other purpose.

Relief for ARS Investors: Purchases from ARS Investors

3. TD has agreed to provide liquidity to Eligible Investors, as defined below, by purchasing Eligible Auction Rate Securities, as defined below, that have failed at auction at least once since February 13, 2008, at par, in the manner described below.

a. “Eligible Auction Rate Securities,” for the purposes of this Consent Order, shall mean ARS purchased at TD on or before February 13, 2008, and that have failed at auction at least once since February 13, 2008. Notwithstanding the foregoing definition, Eligible Auction Rate Securities shall not include ARS that were purchased at TD or entities acquired by TD’s parent companies in accounts owned, managed, or advised by or through independent registered investment advisers; and

b. “Eligible Investors,” for the purposes of this Consent Order, shall mean the following current and former account owners who purchased Eligible Auction Rate Securities at TD on or before February 13, 2008, did not transfer such Eligible Auction Rate Securities away from TD prior to January 24, 2006 (Merger Date)¹, and held those securities on February 13, 2008:

1. Natural persons (including their IRA accounts, testamentary trust and estate accounts, custodian UGMA and UTMA accounts, and guardianship accounts); or

2. Charities, endowments, or foundations with Internal Revenue Code Section 501(c)(3) status; or

3. Small Businesses and Institutions. For purposes of this provision, “Small Businesses and Institutions” shall mean the following account owners with total assets at TD of \$10 million or less as of March 13, 2009: trusts; corporate trusts; corporations; employee pension plans/ERISA and Taft Hartley Act plans; educational institutions; incorporated not-for-profit organizations; limited liability companies; limited partnerships; non-public companies; partnerships; personal holding companies; unincorporated associations; and government and quasi-government entities:

¹ TD was formed as a result of the consolidation of retail brokerage operations of Ameritrade, Inc. and TD Waterhouse Investors Services, Inc. following Ameritrade Holding Corporation’s acquisition of TD Waterhouse Group, Inc. on January 24, 2006.

i. In calculating total assets at TD for the purposes of paragraph 3(b)(3), immediately below, of this Consent Order, TD may include household accounts;

ii. If an account owner described within paragraph 3(b)(3), immediately below, transferred its Eligible Auction Rate Securities away from TD prior to March 13, 2009, then the date of the account owner's request to transfer its Eligible Auction Rate Securities shall be used for determining whether the account owner had \$10 million or less in assets at TD;

iii. "Small Businesses and Institutions" shall not include broker-dealers or banks acting as conduits for their customers, or customers that had total assets of greater than \$50 million as of the date of this Consent Order; and

iv. In no event shall TD be required by this Consent Order to purchase more than \$10 million of ARS from any Small Business or Institution.

4. Pursuant to the Consent Orders entered on July 20, 2009, TD offered to purchase, at par plus accrued and unpaid dividends/interest, from Eligible Investors their Eligible Auction Rate Securities (the "Purchase Offer"). The Purchase Offer remained open as follows:

a. First Offer Period. For those Eligible Investors with assets at TD of \$250,000 or less as of March 13, 2009, the Purchase Offer remained open for a period of seventy-five (75) days from the date on which the Purchase Offer was sent ("First Offer Period"). To the extent that any Eligible Investor transferred their Eligible Auction Rate Securities away from TD before March 13, 2009, then the measurement date for the \$250,000 threshold shall be the date on which the transfer was requested by the Eligible Investor; and

b. **Second Offer Period.** For those Eligible Investors with assets at TD of more than \$250,000 as of March 13, 2009, the Purchase Offer remained open until at least March 23, 2010 (“Second Offer Period”), subject to extension pursuant to paragraph 7(b) below. To the extent that any Eligible Investor transferred their Eligible Auction Rate Securities away from TD before March 13, 2009, then the measurement date for the \$250,000 threshold shall be the date on which the transfer was requested by the Eligible Investor.

5. No later than August 10, 2009, TD used its best efforts to identify and provide notice to Eligible Investors of the relevant terms of this Consent Order. Said notice explained what Eligible Investors must do to accept, in whole or in part, the Purchase Offer. TD also provided written notice of the relevant terms of this Consent Order to any subsequently identified Eligible Investors.

6. To the extent that any Eligible Investors had not responded to the Purchase Offer on or before forty-five (45) days before the end of the applicable offer period (defined in paragraphs 4(a) and (b) immediately above), TD provided any such Eligible Investor with a second written notice informing them again of the Purchase Offer, including the date by which the applicable offer period will end. TD also informed them of the relevant terms of this Consent Order and any other material issues regarding the Eligible Investors’ rights.

7. Eligible Investors could accept the Purchase Offer by notifying TD, as described in the Purchase Offer, at any time before midnight, Eastern Time, on the last day of the applicable offer period. An acceptance had to be received by TD prior to the expiration of the applicable offer period, or any extension thereof, to be effective. The purchases were conducted as follows:

a. Purchases Relating to Eligible Investors to Whom the First Offer Period Applies. For those Eligible Investors to whom the First Offer Period applies, and who accepted the Purchase Offer within the First Offer Period, TD purchased their Eligible

Auction Rate Securities no later than five (5) business days following the expiration of the First Offer Period;

b. Purchases Relating to Eligible Investors to Whom the Second Offer Period Applies. For those Eligible Investors to whom the Second Offer Period applies, and who accepted the Purchase Offer within the Second Offer Period, TD purchased their Eligible Auction Rate Securities as soon as practicable and, in any event, no later than five (5) business days following the expiration of the Second Offer Period (the “Purchase Deadline”). TD used its best efforts to effectuate all purchases under this paragraph by March 31, 2010;

c. An Eligible Investor may revoke his/her/its acceptance of TD’s Purchase Offer at any time up until TD purchases such Eligible Investor’s Eligible Auction Rate Securities or provides notice of TD’s intent to purchase such Eligible Auction Rate Securities.

d. TD’s obligation under this paragraph to those Eligible Investors who custodied their Eligible Auction Rate Securities away from TD as of July 20, 2009 was be contingent on: (1) TD receiving reasonably satisfactory assurance from the financial institution currently holding the Eligible Investor’s Eligible Auction Rate Securities that the bidding rights associated with such Eligible Auction Rate Securities will be transferred to TD, and (2) transfer of the Eligible Auction Rate Securities back to TD; and

e. TD used its best efforts to identify, contact, and assist any Eligible Investor who transferred the Eligible Auction Rate Securities out of TD’s custody in returning such Auction Rate Securities to TD’s custody, and did not charge such Eligible Investor any fees relating to or in connection with the return to TD or custodianship by TD of such Eligible Auction Rate Securities.

8. In the event that TD received a purchase request from a customer who purchased Eligible Auction Rate Securities at TD prior to February 13, 2008, but who transferred such Eligible Auction Rate Securities away from TD prior to the Merger Date, TD engaged in good faith negotiations with such customer in an attempt to resolve the customer's request. TD promptly notified a representative specified by the North American Securities Administrators Association ("NASAA representative") of all such requests.

9. By July 22, 2009, TD established: (a) a dedicated toll-free telephone assistance line, with appropriate staffing, to provide information and to respond to questions concerning the terms of this Consent Order; and (b) a public Internet page on its corporate website(s), with a prominent link to that page appearing on TD's relevant homepage(s), to provide information concerning the terms of this Consent Order and, via an e-mail address or other reasonable means, to respond to questions concerning the terms of this Consent Order. TD maintained the telephone assistance line and Internet page through at least the last day of the Purchase Deadline, or any extension thereof.

Relief for Eligible Investors Who Sold Below Par

10. No later than seventy-five (75) days from July 20, 2009, TD used its best efforts to identify any Eligible Investor who sold Eligible Auction Rate Securities below par between February 13, 2008 and July 20, 2009 ("Below Par Seller") and paid them the difference between par and the price at which the Eligible Investor sold the Eligible Auction Rate Securities, plus reasonable interest thereon. TD promptly paid any such Below Par Seller identified thereafter.

Reimbursement for Related Loan Expenses

11. As soon as practicable, but not later than seventy-five (75) days from July 20, 2009, TD used its best efforts to identify Eligible Investors who took out loans from TD after February 13,

2008, that were secured by Eligible Auction Rate Securities that were not successfully auctioning at the time the loan was taken out from TD and paid interest associated with the auction rate securities based portion of those loans in excess of the total interest and dividends received on the auction rate securities during the duration of the loan. TD reimbursed such customers promptly for the excess expense, plus reasonable interest thereon.

Arbitration

12. TD consents to participate in a special arbitration (“Arbitration”) for the exclusive purpose of arbitrating any Eligible Investor’s consequential damages claim arising from their inability to sell Eligible Auction Rate Securities.

13. TD notified Eligible Investors of the Arbitration process under the following terms:

a. The Arbitration will be conducted by a single public arbitrator (as defined by Section 12100(u) of the FINRA Code of Arbitration Procedures for Customer Disputes);

b. TD will pay all applicable forum and filing fees. Eligible Investors may seek recovery for their attorneys’ fees to the same extent that they may under standard arbitration procedures;

c. Any Eligible Investor who chooses to pursue such claims in the Arbitration shall bear the burden of proving that they suffered consequential damages and that such damages were caused by their inability to access funds invested in Eligible Auction Rate Securities;

d. In the Arbitration, TD shall be able to defend itself against such claims, provided, however, that TD shall not contest liability for the illiquidity of the underlying ARS or use as part of its defense any decision by an Eligible Investor not to borrow money from TD; and

e. All customers, including but not limited to Eligible Investors who avail themselves of the relief provided pursuant to this Consent Order, may pursue any remedies against TD available under the law. However, Eligible Investors that elect to utilize the Arbitration process set forth above are limited to the remedies available in that process and may not bring or pursue a claim relating to Eligible Auction Rate Securities in another forum.

14. All terms used but not defined herein shall have the meaning assigned to them by the Securities Law.

Reporting and Meetings

15. Within forty-five (45) days of the end of each month beginning with a report covering the month ended July 30, 2009, and continuing through and including a report detailing the month ended March 31, 2010, TD submitted a monthly written report to the NASAA representative detailing its progress with respect to its obligations pursuant to this Consent Order.

16. TD offered to confer with the NASAA representative on a quarterly basis to discuss TD's progress to date through the first quarter of 2010.

17. The reporting or meeting deadlines set forth above may be amended with written permission from the NASAA representative.

Compliance Measures

18. TD is ordered to provide the NASAA representative with a list of Customers, (delineated and separated by state residency and including amounts of Eligible Auction Rate Securities then held at TD) who receive notice of the Offer contained in paragraphs 3 and 4, immediately above, of this Consent Order promptly after such notice is sent.

19. TD is ordered to provide the NASAA representative with a list of Below Par Sellers (delineated and separated by state residency and including amounts of Eligible Auction Rate

Securities) who are eligible for relief pursuant to paragraph 10, immediately above, of this Consent Order promptly after the First Offer Period ends.

20. TD is ordered to provide the NASAA representative with a list of Customers who took loans from TD secured by Eligible Auction Rate Securities (delineated and separated by state residency and including amounts of Eligible Auction Rate Securities and original loan amounts) who are entitled to relief under paragraph 11, immediately above, of this Consent Order promptly after the First Offer Period ends.

21. TD is ordered to comply with the Securities Law and with the regulations adopted by the Bureau.

22. For any person or entity not a party to this Consent Order, unless expressly stated herein, this Consent Order does not limit or create any private rights or remedies against TD, limit or create liability of TD, or limit or create defenses of TD to any claims.

23. Nothing herein shall preclude New Jersey, its departments, agencies, boards commissions, authorities, political subdivisions, and corporation (collectively "State Entities"), other than the Bureau and only to the extent set forth in paragraph 1, immediately above, and the officers, agents, or employees of State Entities from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against TD in connection with the marketing and sale of ARS at TD.

24. This Consent Order is binding in New Jersey.

25. Should TD fail to comply with any or all provisions of this Consent Order, the Bureau may impose sanctions and costs and seek other appropriate relief subject to the TD's rights to notice and a hearing pursuant to the Securities Law.

26. This Consent Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of New Jersey without regard to any choice of law principles.

27. This Consent Order shall be binding upon TD and its successors and assigns as well as on successors and assigns of relevant affiliates with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

TD Ameritrade, Inc. hereby consents to the form and entry of this Consent Order without admitting or denying the findings of fact and conclusions of law set forth herein.

NEW JERSEY BUREAU OF SECURITIES

By: Amy Kopleton

Name: Amy Kopleton

Title: Acting Bureau Chief

DATED: 4/20/11

CONSENT TO ENTRY OF CONSENT ORDER TD AMERITRADE, INC.

TD Ameritrade, Inc. ("TD") hereby acknowledges that it has been served with a copy of this Consent Order, has read the foregoing Consent Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

TD admits the jurisdiction of the Bureau, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Consent Order, and consents to entry of this Consent Order by the Bureau as settlement of the issues contained in this Consent Order.

TD states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

William J. GERBER represents that he/she is Chief Financial Officer of TD, and that, as such, has been authorized by TD to enter into this Consent Order for and on behalf of TD.

Dated this 12th day of April, 2011.

TD AMERITRADE, INC.

By: William J. Gerber

Title: SVP & CFO

State of Maryland)
County of Howard) ss.

SUBSCRIBED AND SWORN TO before me this 12th day of April, 2011.

Graham Fowler
Notary Public

My commission expires:

